

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to repeal* ATCP 82.02 (1) (a) and (b), (4) and (7) (b); *to renumber and amend*
3 ATCP 82.02 (2)(e) and (7)(a), (d), and (e); *to amend* ATCP 82.02 (title), (1)(title), (2), (3)(title),
4 3 (a) and (b), (5) (b), (6) (title), (6) (a) to (c) and (7) (title); and *to create* ATCP 82.02 (2) (e);
5 *relating to* bulk milk tanker licensing regulations, and affecting small business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (“department”) regulates bulk milk tanker licensing and permitting, construction, maintenance, cleaning and sanitizing requirements; bulk milk weigher and sampler requirements, and mandatory procedures for collecting milk from dairy farms and delivering milk to a dairy plant and collecting milk samples for testing through ch. ATCP 82 (Bulk Milk Collection, Sampling, and Transportation). This rule revision will incorporate recent statutory changes eliminating licensing requirements for bulk milk tankers.

Statutes Interpreted

Statute Interpreted: s. 97.21, Stats.. (Milk haulers and milk distributors).

Statutory Authority

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

Explanation of Statutory Authority

The department has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The Department also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. The department has specific authority to promulgate rules

related to milk haulers in s. 97.21(6), Stats., which allows the department to establish rules related to the following: fees and regulations for bulk milk tanker operators and milk distributors; standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

Related Statutes and Rules

Wisconsin's milk haulers are governed by ch. 97, Stats. (Food Regulation). Milk haulers and milk distributors are regulated under s. 97.21, Stats., (Milk haulers and milk distributors). Chapter 82, Wis. Adm. Code, interprets ch. 97, Stats., as it relates to milk haulers and milk distributors.

Plain Language Analysis

In the past, Wisconsin required the owner of a bulk milk tanker, used to transport grade "A" milk and milk products, to hold a license and a Grade "A" permit for that tanker. The department charged a licensing fee of \$45 and issued a Grade "A" permit as an endorsement on the license. 2015 Wisconsin Act 55 revised s. 97.21, Stats., eliminating bulk milk tanker licensing and license fee requirements and aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a grade "A" permit. The proposed rule clarifies that a grade "A" permit cannot be issued to a bulk milk tanker unless that tanker has passed an inspection by the department, a Wisconsin certified industry inspector, or a regulator from the relevant agency in another state within the preceding year. Reciprocity of the Grade "A" bulk milk tanker permit is required by the US Food and Drug Administration's Pasteurized Milk Ordinance (PMO), a cooperative agreement that governs the interstate shipment of Grade "A" milk and milk products, and is the basis of each state's Grade "A" milk requirements. The department proposes to incorporate these revisions into ATCP 82 to reflect these recent statutory changes and remain consistent with the PMO.

The rule also adopts a modest increase in the reinspection fee, so that it covers department costs. Reinspections are conducted by the department to verify that appropriate corrective actions have been taken, after an initial inspection indicates a bulk milk tanker has not met one or more regulatory requirements. In the past year, only 13 tankers required reinspection. The proposed rule increases the reinspection fee from \$45 to \$60.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

The PMO establishes minimum standards for regulation of Grade "A" milk and milk products. States must set regulatory standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade "A" milk and milk products in interstate commerce.

Comparison with Rules in Adjacent States

Michigan, Minnesota, Iowa and Illinois base their dairy regulations on the PMO. The proposed rule will align Wisconsin's regulations with the PMO and these neighboring states for licensing and permitting of grade "A" tankers and Bulk Milk Weighers and Samplers. Each of these states inspects bulk milk tankers, and issues a grade "A" permit after inspection. Some states charge a fee associated with these grade "A" inspections.

Summary of Factual Data and Analytical Methodologies

Proposed rule changes were developed in response to recent statutory change after a review of PMO requirements and a review of practices in neighboring states.

Analysis and Supporting Documents used to Determine Effect on Small Business

The PMO makes no distinction between large and small businesses in establishing requirements for grade "A" collecting, sampling and transporting milk and milk products.

Effect on Small Business

By eliminating licensing fees, the proposed rule changes will benefit dairy producers, dairy plants, and companies that operate bulk milk tankers, many who are small businesses. The proposed rule does not alter existing requirements for dairy-related businesses. The proposed rule includes a modest increase in the reinspection fee from \$45 to \$60. This fee would only be charged if the department finds a regulatory violation necessitating corrective action and a reinspection. In the past year, only 13 owners of bulk milk tankers were charged a reinspection fee. All grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA's PMO in order to collect, sample, and transport grade "A" dairy products and no special accommodation may be made for small businesses.

DATCP Contact

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Where and When Comments May Be Submitted

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 **SECTION 1.** ATCP 82.02 (title) and 82.02 (1) (title) are amended to read:

2 ATCP 82.02 (title) **Bulk milk tanker; license; grade A permit.**

3 ATCP 82.02 (1) (title) ~~LICENSE PERMIT~~ PERMIT REQUIRED.

4 **SECTION 2.** ATCP 82.02 (1) (a) and (b) are repealed.

5 **SECTION 3.** ATCP 82.02 (2) (e) is renumbered as ATCP 82.02 (2) (f) and, as renumbered,
6 is amended to read:

7 ATCP 82.02 (2) (f) All applicable fees and surcharges required under subs. ~~(4) to (5)~~ and
8 (6).

9 **SECTION 5.** ATCP 82.02 (2) (e) is created to read:

10 ATCP 82.02 (2) (e) Proof of an inspection of the bulk milk tanker conducted within the
11 preceding 12 months by the department, another state's agency responsible for issuing grade A
12 bulk milk tanker permits, or a certified industry inspector as allowed under s. ATCP 82.02 (8).

13 **SECTION 6.** ATCP 82.02 (3) (title), (a), and (b) are amended to read:

14 ATCP 82.02 (3) (title) ACTION ON ~~LICENSE PERMIT~~ PERMIT APPLICATION.

15 ATCP 82.02 (3) (a) The department shall grant or deny a ~~license permit~~ permit application under
16 sub. (2) within 40 days after the department receives a complete application.

1 ATCP 82.02 (3) (b) The department shall not issue or renew a ~~license~~ permit until the
2 applicant has paid all applicable fees and surcharges, set forth in a statement from the
3 department, that are due and payable by the applicant under this section. The department shall
4 refund a fee paid under protest if, upon review, the department determines that the fee is not due
5 and payable.

6 **SECTION 7.** ATCP 82.02 (4) is repealed.

7 **SECTION 8.** ATCP 82.02 (5) (b), (6) (title), (a), (b), (c) and (7) (title) are amended to read:

8 ATCP 82.02 (5) (b) The reinspection fee under par. (a) is ~~\$45~~ \$60.

9 ATCP 82.02 (6) (title) SURCHARGE FOR OPERATING WITHOUT A LICENSE PERMIT.

10 ATCP 82.02 (6) (a) An applicant for a bulk milk tanker license shall pay a ~~license fee~~
11 surcharge of \$100 if the department determines that, within 365 days prior to submitting the
12 ~~license~~ grade A permit application, the applicant operated a bulk milk tanker to transport milk or
13 fluid milk products for sale or use as a grade A milk or grade A dairy products without a ~~license~~
14 ~~or~~ grade A permit in violation of sub. (1) ~~or (7)~~.

15 ATCP 82.02 (6) (b) In addition to paying the ~~license fee~~ surcharge under par. (a), an
16 applicant who violated sub. (1) ~~or (7)~~ shall pay all fees, set forth in a statement from the
17 department, that are due and payable for the ~~license~~ permit year in which the applicant violated
18 sub. (1) ~~or (7)~~.

19 ATCP 82.02 (6) (c) Payment of the ~~license fee~~ surcharge and past fees under pars. (a) and
20 (b) does not relieve the applicant of any other civil or criminal liability which results from a
21 violation of sub. (1) ~~or (7)~~, but does not constitute evidence of any violation of law.

22 ATCP 82.02 (7) (title) GRADE A PERMIT; TANKER IDENTIFICATION.

1 **SECTION 8.** ATCP 82.02 (7) (a) to (e) are renumbered as ATCP 82.02 (1) and (2) and
2 82.02 (7) (a) and (b) and, as renumbered, are amended to read:

3 ATCP 82.02 (1) ~~Except as provided under par. (e), no~~ No person may operate a bulk milk
4 tanker to transport milk or fluid milk products for sale or use as a grade A milk or grade A dairy
5 products unless that person holds a valid grade A permit issued annually for that bulk milk tanker
6 by the department or an equivalent regulatory agency in another state where that bulk milk
7 tanker is normally based. A grade A permit is not transferable between persons or bulk milk
8 tankers.

9 ATCP 82.02 (2) An application for a grade A permit under par. (a) shall be made on a
10 form provided by the department ~~the department shall grant or deny a grade A permit application~~
11 ~~within 30 days after the department receives a complete application.~~ An application shall
12 include ~~proof of an inspection of the bulk milk tanker conducted within the preceding year by the~~
13 ~~department, another state's agency responsible for issuing grade A bulk milk tanker permits, or a~~
14 ~~certified industry inspector as allowed under s. ATCP 82.02 (8).~~ all of the following:

15 ATCP 82.02 (7) (a) The holder of a grade A permit under ~~par. (a)~~ sub. (1) shall display
16 all of the following information, in the manner required under par. ~~(e)~~ (b), on both sides of the
17 bulk milk tanker to which the permit applies:

18 ATCP 82.02 (7) (b) The information display under par. ~~(a)~~ (a) shall be permanently
19 attached to the bulk milk tanker. The color of the letters and numbers shall be in sharp contrast
20 to the background on which the letters and numbers are displayed. Each letter and number
21 comprising the information shall be at least 2 inches in height and readily legible during daylight
22 hours while the bulk milk tanker is stationary. The permit holder shall maintain the display so
23 that it remains fully legible at all time.

1 **SECTION 10. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on
2 the first day of the month following publication in the Wisconsin administrative register, as
3 provided under s. 227.22(2)(intro.).

Dated this _____ day of _____, 2016.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary